

EXHIBIT 6

Vito, Robert

June 19, 2007

Philadelphia, PA

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

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4 IN RE: PHARMACEUTICAL : MDL NO. 1456
5 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
6 PRICE LITIGATION : 01-CV-12257-PBS

7 :

8 THIS DOCUMENT RELATES TO :
9 U.S. ex rel. Ven-A-Care of :
10 the Florida Keys, Inc. v. :
11 Abbott Laboratories, Inc. :
12 No. 06-CV-11337-PBS :

13 - - -

14 Videotaped deposition of ROBERT
15 VITO was taken, pursuant to notice, at MORGAN
16 LEWIS & BOCKIUS, LLP, 1701 Market Street,
17 Philadelphia, Pennsylvania, on Tuesday, June
18 19, 2007, beginning at 9:10 a.m., before M.
19 Kathleen Muino, Professional Shorthand
20 Reporter, Notary Public; Michael Hunterton,
21 Certified Legal Video Specialist, there being
22 present:

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|--|---|
| <p style="text-align: right;">Page 162</p> <p>1 biologicals.</p> <p>2 Q. Is this implementing the provisions in</p> <p>3 the Balanced Budget Act of 1997 with respect to</p> <p>4 reimbursement of prescription drugs by Medicare?</p> <p>5 MR. NEAL: Object to the form.</p> <p>6 You can answer.</p> <p>7 THE WITNESS: I think so.</p> <p>8 BY MR. TORBORG:</p> <p>9 Q. And this is something you would have</p> <p>10 reviewed at the time?</p> <p>11 A. This is something that -- what do -- I</p> <p>12 don't understand the word "review."</p> <p>13 Q. Would you have seen this at around the</p> <p>14 time it was created?</p> <p>15 A. I hope -- I hope so, yes.</p> <p>16 Q. And under the section that states</p> <p>17 payment -- Payments For Drugs and Biologicals, this</p> <p>18 document states: Drugs and biologicals not paid on</p> <p>19 a cost or prospective payment basis are paid based</p> <p>20 on the lower of the billed charge or 95 percent of</p> <p>21 the AWP as reflected in sources such as the Red</p> <p>22 Book, Blue Book, or Medispan.</p> | <p style="text-align: right;">Page 164</p> <p>1 payments for prescription drugs in Medicare Part B.</p> <p>2 Q. And have you had discussions with Mr.</p> <p>3 Niemann about prescription drug reimbursement?</p> <p>4 A. Have -- have we?</p> <p>5 Q. Yeah. Have you?</p> <p>6 A. Yes.</p> <p>7 Q. About how many?</p> <p>8 A. Many.</p> <p>9 Q. If you had to ballpark?</p> <p>10 A. Well, every -- every one of our reports,</p> <p>11 we had a meeting in which he would be at when we</p> <p>12 design the study, then he would be at a meeting in</p> <p>13 which we had an exit at the study, and then he</p> <p>14 would also have discussions about our</p> <p>15 recommendations, so many times. So three or four</p> <p>16 times for each review we have at least.</p> <p>17 Q. Was there anyone else at HCFA, now CMS,</p> <p>18 who was more involved than Mr. Niemann with respect</p> <p>19 to the issue of Medicare reimbursement of drugs?</p> <p>20 A. I -- I -- I think that Mr. Niemann was</p> <p>21 the most knowledgeable person on the Part B drugs.</p> <p>22 There might have been his supervisors, but I</p> |
| <p style="text-align: right;">Page 163</p> <p>1 Mr. Vito, is that consistent with your</p> <p>2 understanding of how the Balanced Budget Act of</p> <p>3 1997 directed CMS to reimburse drugs under Part B?</p> <p>4 A. I think so.</p> <p>5 Q. Would you agree with me that at least</p> <p>6 this is how CMS interpreted the provisions in the</p> <p>7 Balanced Budget Act of 1997?</p> <p>8 MR. NEAL: Objection as to form.</p> <p>9 MR. AZORSKY: Objection to form.</p> <p>10 MR. NEAL: You can answer.</p> <p>11 THE WITNESS: I -- I -- this is a CMS</p> <p>12 document, so this is what they sent out, so I would</p> <p>13 imagine this is what -- the way they interpreted</p> <p>14 it.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. If you go to the second page, the</p> <p>17 contact person listed is Robert Niemann. Do you</p> <p>18 know who Mr. Niemann is?</p> <p>19 A. Yes.</p> <p>20 Q. Who is he?</p> <p>21 A. He works at -- it was then HCFA, and he</p> <p>22 was one of the more knowledgeable people in the</p> | <p style="text-align: right;">Page 165</p> <p>1 believe Mr. Niemann was the most knowledgeable</p> <p>2 person.</p> <p>3 Q. And Mr. Niemann is the contact person of</p> <p>4 a regulation -- or of a CMS document that indicates</p> <p>5 that the Balanced Budget Act of 1997 called for CMS</p> <p>6 to reimburse prescription drugs at 95 percent of</p> <p>7 the AWP as reflected in sources such as Red Book,</p> <p>8 Blue Book, or Medispan, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Do you recall anyone else at CMS who was</p> <p>11 particularly involved in the issue of Medicare</p> <p>12 reimbursement of drugs?</p> <p>13 A. There -- there were some others, but the</p> <p>14 main person always seems to be -- is Bob Niemann.</p> <p>15 Q. Do you recall anyone who was sort of Mr.</p> <p>16 Niemann's counterpart with respect to Medicaid</p> <p>17 reimbursement of drugs at CMS?</p> <p>18 A. Yes.</p> <p>19 Q. And who was that?</p> <p>20 A. Larry Reed.</p> <p>21 Q. And did you have conversations with Mr.</p> <p>22 Reed?</p> |

42 (Pages 162 to 165)